IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10832 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHD.HABIB SULEMANBHAI KUSHIKIWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10832 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/12/2001

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the order of detention dtd.2/11/2001 passed by the District Magistrate, Sabarkantha under the powers

conferred upon him under Sec.3(2) of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "the Act").

2. The learned Additional Standing Counsel for Central Government - Ms.Davawala tenders the counter affidavit on behalf of the Union of India. The same be taken on record.

3. The learned counsel for the petitioner has submitted that against the detaining authority has passed the detention order on 2/11/2001 and the detention order has been implemented on the same day and the grounds of detentions have been formulated subsequently on 5/11/2001 which is illegal and on this ground alone the impugned detention order is required to be quashed and set aside. In support of his submission, the learned counsel for the petitioner has relied upon the decision of this Court rendered in the case of PARSHOTTAM DAHYABHAI CHUNARA VS. STATE OF GUJARAT & ORS. reported in 29(1) GLR 342 in which the in para 2, this Court has held as under :-

"2. The provisions of Art.22(5) of the Constitution of India conjoins a duty upon the detaining authority to communicate the grounds on which the order of detention has been made. This provision postulates that the grounds on which the detention is made should be made in exercise when the order of detention is passed. On this point necessary reference may be made to the following decisions of the Supreme Court.

(i) State of Bombay v. Atmaram Shridhar Vaidya reported in AIR 1951 SC 157.

(II) Naresh Chandra Ganguli v. State of West Bengal, reported in AIR 1959 SC 1335.

In the aforesaid decisions it has been laid down by the Supreme Court that before passing order of detention, the detaining authority is required to be satisfied that it was necessary to make order of detention. The grounds of detention are required to be communicated to the detenu as soon as practicable. The grounds are conclusion of fact and this conclusion of fact must be in exercise when the order of detention is made. This is the basis on which the requisite satisfaction can be arrived at and, therefore, the grounds of detention must be in existence

when the order of detention is made."

4. Here in the present case also, the detaining authority has passed the detention order on 2/11/2001 and the grounds of detentions have been formulated subsequently on 5/11/2001, and there is no controversy on this point. On the other hand, the State Government has neither filed any affidavit justifying the action of the State Government nor satisfactorily explained such action.

5. In view of the above referred judgement relied on by the learned counsel for the petitioner, the impugned detention order is required to be quashed and set aside.

6. The petition is allowed. The impugned order of detention dated 2/11/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Mohammad Habib Sulemanbhai Kushkiwala is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P. DHOLAKIA, J.)
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